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In The Supreme Court of The United States

OCTOBER TERM, 1955

No. 336

CHARLES STACEY and WILLIAM WINSLOW,
Appellants,

vs.

THEODORE PAPPAS,
Appellee.

ON APPEAL FROM THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE

MOTION TO DISMISS THE APPEAL

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Plaintiff-Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves that the appeal from the final judgment and decree of the Supreme Judicial Court of the State of Maine be dismissed on the grounds that the appeal does not present a substantial Federal question.

STATEMENT

This litigation was begun by a proceeding in the equity courts of the State of Maine to enjoin the picketing of the restaurant of the Plaintiff-Appellee at Portland, Maine, by the Defendants-Appellants for organizational purposes. It was heard upon the following agreed statement of facts:

"1. (That) the said Plaintiff is the operator and owner of a certain restaurant or eating establishment known as and called Theodore's Lobster House, located at 123 Commercial Street in said Portland.

"2. (That) the said Defendants and their agents and servants have been and are conducting picketing at the place of business of your Plaintiff.

"3. The said picketing has been at all times peaceful picketing.

"4. At least three employees of the Plaintiff are on strike, two of whom have been participating in the picketing and the third of whom has been present at the site of the picketing. All three are members of the union, Local No. 390 of the Hotel and Restaurant Employees and Bartenders International Union.

"5. The Defendants and the three employees aforesaid who are on strike have been conducting the picketing for the sole purpose of seeking to organize other employees of the Plaintiff, ultimately to have the Plaintiff enter into collective bargaining and negotiations with the Union, this being done as a preliminary for attempting to organize restaurant employees in other establishments throughout the State of Maine.

"6. The Plaintiff employs on an average thirty persons who would properly be subject to organization and

of this thirty at least five are sporadic or transient employees.

"7. The business of the Plaintiff is a lawful business and if the picketing is illegal, the Plaintiff has been suffering and will continue to suffer damage in the conduct of his business which is irreparable and for which there is no adequate remedy at law."

The injunction was issued as prayed for and on appeal the Supreme Judicial Court of the State of Maine dismissed the appeal and affirmed the decision below. The entire record of this litigation has been prepared and submitted to this Court.

It may be stated in brief summary of the decision of the Supreme Judicial Court of the State of Maine that the Maine Court rested its decision on Section 15 of Chapter 30 of the Revised Statutes of Maine, 1954, which reads, in pertinent part, as follows:

"Workers shall have full freedom of association, self-organization and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection, free from interference, restraint or coercion by their employers or other persons . . ."

The Maine Court found that the statute was designed to assure employees freedom from the stated pressures from *any* source in the making of employee organizational decisions and that the picketing created pressures in violation of the statute. The Maine Court also found that the injunction did not violate the provisions of the Federal constitution.

ARGUMENT

The State of Maine, acting through its legislative and judicial branches, has declared that employees shall be free from interference, restraint or coercion by their employers

or other persons in their association, self-organization and designation of representatives. This policy is set forth in the statute and applied in the instant case. A reading of the statute and of the decision involved makes clear the public policy of the State. The issue before this Court may be stated as in

> *Building Service E. I. U.* vs. *Gazzam,* 339 U. S. 532, 94 Law Ed. 1045 (1950):

"To judge the wisdom of such policy is not for us; ours is but to determine whether a restraint of picketing in reliance on the policy is an unwarranted encroachment upon rights protected from State abridgment by the Fourteenth Amendment."

The policy of the State of Maine is oriented to the protection of the rights and freedoms of employees. It is not oriented to protect any economic interests of any persons other than employees; it is not limited in its application to the existence of an employer-employee relationship among those it governs; it is not to protect the interests of any possible party concerned in a matter as against the interests of any other such party. The purpose of this legislation is to preserve freedom. The application of this policy in the instant case is to protect the employees of the Plaintiff-Appellee from interference, restraint or coercion by their employer or other persons.

Maine has thus erected certain safeguards in the area of labor law which concern the protection of workers in the freedom of their organizational activity and this Maine policy is consistent with the State legislative approaches which have many times been ruled upon and approved by this Court. The safeguards provided by the State of Maine encompass not only action by employers, but action by other persons as well, which would impinge upon the freedom of choice which the statute seeks to preserve. This may be a protection of employee freedom different from the protection afforded in

some other jurisdictions in that its scope bars action by persons other than employers. But in the recognition of the validity of the freedom of working men from interference, restraint or coercion in their organization the source of such forces is not the basis for a difference in judicial approach. And there certainly exists here no substantial question which requires the decision of this Court.

The next consideration is the character of picketing. This Court has cast picketing in its proper light: "This Court has said that picketing is in part an exercise of the right of free speech guaranteed by the Federal Constitution (citations). But since picketing is more than speech and establishes a locus in quo that has far more potential for inducing action or nonaction than the message the pickets convey, this Court has not hesitated to uphold a state's restraint of acts and conduct which are an abuse of the right to picket rather than a means of peaceful and truthful publicity." *Gazzam* case, *supra.*

"No opinions relied on by petitioners assert a constitutional right in picketers to take advantage of speech or press to violate valid laws designed to protect important interests of society. . . . It has never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced or carried out by means of language either spoken, written, or printed. . . . Such an expansive interpretation of the constitutional guarantees of speech and press would make it practically impossible, however, to enforce laws against agreements in restraint of trade, as well as many other agreements and conspiracies deemed injurious to society."

> *Giboney* vs. *Empire Storage and Ice Company,* 336 U. S. 490, 93 Law Ed. 834 (1949).

It is basic in the many decisions of this Court that this Court has thus recognized that picketing can in fact be designed to cause coercion, interference and restraint upon the

decisions and actions of men in violation of law, and that picketing in itself can be the coercion, interference and restraint by virtue of its "potential for inducing action or non-action." If there is a distinction between picketing designed to cause coercion, interference and restraint and picketing which itself causes coercion, interference and restraint, then it is a distinction without a difference and certainly it offers no question of any substance which requires the decision of this Court.

The validity of these positions can also be shown by an analysis of the approach taken by the Defendants-Appellants in the jurisdictional statement in this matter. This approach consists of two major aspects.

The first is the attempt to argue that the Maine law is entitled to no consideration by this Court. A brief examination of this argument of the Defendants-Appellants reveals its weakness and distortion. The legislation here involved is not designed to defeat the interests of working men. Its purpose is exactly the opposite and there is nothing in its wording or construction or in its application which supports the position of the Appellants. This legislation is designed to protect and sponsor neither employer interests nor the interests of organized labor; rather it is designed to create a free atmosphere and area to protect the worker in the evolution of his own free decision in these matters. It is simply and strongly stated in the statute and cannot be misconstrued as to its intent or purpose in the declaration of State policy. The fact that those particularly interested in organizing the workers into unions have run afoul of the statute proves its efficacy and validity and not any weakness or lack of true legislative impact. The fact also that this is the first case in the implementation of the statute is proof, not denial, of the vigor of the statute. Simply stated the argument of the Defendants-Appellants seems to be that the law cannot be good since it applies to them and affects them.

The second facet of the Defendants-Appellants' argument is that the decision of the Maine Court is not based on fact. The agreed statement of facts in this matter states that the Plaintiff-Appellee had, and would have, suffered irreparable damage as a result of continued picketing. This Court has characterized picketing as noted hereinabove. The Maine Court concurs with this Court in the appraisal of picketing and of the consequences of picketing and reached its conclusions on the admitted fact of the irreparable damages caused by the picketing in terms of the application of this reality to the day-to-day affairs of the restaurant business of the Plaintiff-Appellee. The Plaintiff-Appellee, as the Maine Court points out, faces an irreparable situation from which there is no release except to violate the law and the Plaintiff-Appellee's employees, whom the law seeks to assure a freedom from interference, coercion and restraint from any source, are in the equivalent economic vise created by the dilemma which faces the Plaintiff-Appellee employer. The argument of the Defendants-Appellants, which would deny to the Maine Court the right to make this analysis and draw these conclusions from fact, would impose completely unrealistic limitations on any Court and would create a completely invalid frame work for the judicial evaluation of the issues here involved. There is no absence of a factual basis for the evaluation of the effects of the picketing in the instant case.

The Defendants-Appellants then combine these two facets by arguing that the basis of the Maine decision is economic damage to the Plaintiff-Appellee and that alone. This is not the case. The basis of the Maine decision is the statutory guarantee of employee freedom of choice. The economic damage is rather the component which supports and proves the fact of the violation of the conditions established for the preservation of that freedom.

The Defendants-Appellants seek to create an issue where none exists and a true analysis shows that there is no sub-

stantial question here which requires the decision of this Court.

It is respectfully submitted, therefore, that the appeal herein should be dismissed.

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September, 1955.

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